

No. SE/PWD/B&R/AMBALA/1245.—The Notification under section 4 of the Land Acquisition Act, 1894 for acquisition of land for the work, namely, constructing a road from S. L. road to Jalaludin-ka-Majra in Kurukshetra District published,—vide Notification No. SE/PWD/B&R/Ambala/1236, dated 9th October, 1980 in *Haryana Government Gazette Extraordinary* on October 28, 1980 at page 1699, 1700 may be read as “Hadbast No. 331, village Pehladpur”, instead of “Hadbast No. 331, village Balalpur.”

AND

“Hadbast No. 337, village Jalaludin-ka-Majra, Khasra Nos. 26 ”

22/5, 22/12

INSTEAD OF

“Hadbast No. 337, village Jalaludin-ka-majra, Khasra No. 26 ”

21/5, 12/12

No. SE/PWD/B & R/Ambala/633.—Notification under section 6 of the Land Acquisition Act, 1894 for acquisition of land for the work, namely, constructing Churani Jattan to Atwan road in Kurukshetra District published,—vide Notification No. SE/PWD/B & R/Ambala/627, dated the 9th October, 1980, in *Haryana Government Gazette Extraordinary* as October 28, 1980 at page 1696, the word “Section 4” appearing in fifth line of the Notification may be read as “Section 6”

No. SE/PWD/B & R/Ambala/1246.—The Notification under section 4 of the Land Acquisition Act, 1893, for acquisition of land for the work, namely, constructing a road, namely, Akalgarh Babain via Sanghaur Road to Phalsanda Rangran in Kurukshetra District published,—vide Notification No. SE/PWD/B. & R./Ambala/1235, dated 9th October, 1980 in *Haryana Government Gazette Extraordinary* on October, 28, 1980 at page 1698 may be read as “Hadbast No. 148, Village Ghisarpuri” instead of “Hadbast No. 148, Village Chisarpuri.”

AND

“Hadbast No. 162, Village Phalsanda, Rangran, Area in Acres 1.41.” instead of “Hadbast No. 162, village Phalsanda Rangran, Area in Acres 141”.

(Sd.) . . . ,

Superintending Engineer,
Ambala Circle, P.W.D., B. & R. Branch,
Ambala Cantt.

LABOUR DEPARTMENT

The 3rd November, 1980

No 11(112)-80-8Lab/11455.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. Xlv of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. ESPI Agricultural Machineries Private Limited, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 159 of 1977

between

SHRI A.S. BAGGA, WORKMAN AND THE MANAGEMENT OF M/S. ESPI AGRICULTURAL
MACHINERIES PRIVATE LIMITED, FARIDABAD

Present:—

Workman in person.

Shri S.L. Gupta, for the management.

AWARD

By order No. ID/FD/74/40994, dated 22nd September, 1977, the Governor of Haryana referred the following dispute between the management of M/s. ESPI Agricultural Machineries Private Limited, Faridabad and its workman Shri A.S. Bagga, to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri A.S. Bagga was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 2nd May, 1978 :—

1. Whether the dispute under reference has been decided by a competent court ? If so, to what effect?
2. Whether the judgement of Civil Court operates as *res judicata* ?
3. If issue Nos. 1 and 2 are not decided in the affirmative, whether the termination of services of Shri A.S. Bagga was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management. Evidence was recorded on issues No. 1 and 2. These issues were decided,—*vide* order, dated 12th January, 1979 by my predecessor against the management. On issue No. 3 the management examined Shri S.L. Gupta and closed their case. Then the case was fixed for the evidence of the workman. The workman examined Shri Fateh Singh Bali as WW-2 and made a statement that his affidavit may be read into evidence and closed his case. Arguments were heard. Now I give my finding on issue No. 3 as follows :—

Issue No. 3.—MW-1 stated that he was appointed as an Enquiry Officer,—*vide* Ex. M-1 to enquire into the charges levelled by chargesheet Ex. M-2. He proved his enquiry proceedings as Ex. M-4 and finding Ex. M-5. The services of the workman were terminated,—*vide* Ex. M-6. Documents of enquiry Ex. M-2, M-7 to M-20 were also proved by the witness. He deposed that the workman was given full opportunity for leading defence. The workman was present in the enquiry and signed first four pages of the enquiry. Thereafter he did not sign despite being present. The workman was found guilty by him for the charges levelled against him. He further stated that the workman was given full opportunity to cross examine the witnesses of the management and also to lead his defence. In cross examination he stated that Shri Mohinder Kumar, workman had already resigned. He was a co-accused with the workman. He further stated that he did not know if any telegram was sent by the workman regarding unfairness of the enquiry proceedings. He admitted to be correct that the workman co-operated in the enquiry fully. He denied the suggestion that the workman had demanded some documents from him. He also denied the suggestion that Shri Garg witness of the management had gone out of the enquiry 3-4 times during recording of his statement. He further denied the suggestion that the witness signed the enquiry under pressure of the management. He denied the suggestion that the workman had given him list of witnesses. He further denied that he recorded the statement of witnesses for the management which suited him. Shri Fateh Singh WW-1 stated that in 1974 Shri Mohinder Kumar came to him and told him that he had embezzled some amount of the management and wanted his advice in the matter. He (the witness) advised him to deposit the amount to the management. After a week he again came to him and told that the management had agreed to allow the deposit but wanted to implicate some other person. The witness further stated that Shri A.S. Bagga was that person. He had met him in the Chamber of some advocate. In cross examination the witness could not tell the date and month of his meeting with Shri Mohinder Nath. The name of the advocate was Shri L.D. Adhlakha. But he did not know the name of the advocate of Shri Bagga. Office of Shri Adhlakha was in Daryaganj but he had met in court premises. WW-2 Shri Jagat Singh stated that he knew Shri T.J. Rao, Personnel Officer of the management for the last about 4½ years. He had met Shri Bagga through him. He had been told that services of Shri Bagga had been terminated because he had strain relations with the Director of the Company. The witness further stated that he had been given a photostat copy Ex. WW-2/1 by Shri Rao to be given to Shri Bagga who had refused to receive the same. This copy remained with him until now. In cross examination he stated that he was not aware of the present address of Shri Rao. He belongs to Andhra Pradesh and the witness belongs to village Sibi near Faridabad. Shri Rao first met him in 1976 at Ballabgarh and second time two years before. He never met him except on two occasions. He did not know if Shri Rao had left the factory in 1978. He denied the suggestion that Ex. WW-2/1 was given to him by Shri Bagga and he was depositing at his instance.

The workman concerned appeared in the witness box as WW-3 but did not make any statement except that his affidavit may be read into evidence. Therefore, he was not cross examined by the management. In the affidavit the workman has assailed the enquiry proceedings. He has also reiterated his claim statement in the affidavit.

The workman was charge sheeted on the ground of fraud and misleading the management. According to the charge sheet the workman was deputed by Shri J.N. Garg to find out non receipt of money of V.P.P. by

the company. The workman misrepresented that the V.P.P. money was paid to a wrong person by the Post Master and he will collect the same from him, knowing that Shri Mohinder Kumar had received the money and embezzled the same. The workman according to the chargesheet entered into a conspiracy with Shri Mohinder Kumar to pay the money to the company in instalments telling the company that the instalment was being received through the Post Master. In his explanation the workman denied the charges. During the enquiry statements of Shri J.N. Garg, Mohinder Kumar, Harish Anand, C.P. Jayachandran and Shri P.P. Singh were recorded. Shri Bagga cross examined and signed the proceedings where statement of Shri J.N. Garg was recorded.

The representative for the management argued that the enquiry was fair and proper. The workman participated and cross-examined the management witnesses. He further argued that the workman was not terminated on the finding of the enquiry but due to loss of confidence by the management. On the other hand the workman argued that the chargesheet did not disclose motive as to why the workman wanted to shield Shri Mohinder Kumar. He also argued that as a Stenographer he was deputed to realise the money only to victimise him. The Enquiry Officer did not afford him sufficient opportunity to consult his co-workman. Therefore, natural justice was denied to him. The Enquiry Officer rushed to the proceedings and did not adjourn to give him a fair chance. He also cited AIR 1975 (S.C.) 661. The whole emphasis of the workman has been to assail the enquiry but the same has not been made the basis of termination. Letter of termination Ex M-6 is a letter of termination simplicitor. It runs thus :—

"We draw your attention to the appointment letter, dated 10th October, 1972 whereby you were appointed in the company.

As per terms mentioned in the said appointment, we regret to inform you that your services shall stand terminated with effect from 5th July, 1974. You will be paid one month's wages in lieu of notice.

You are requested to call on the office on any working day for setting your accounts."

In the written statement the management had made a basis of termination finding of Enquiry Officer into the charges levelled against the workman. In para 2 of the written statement it is written :—

"Claimant was found guilty of the charges levelled against him. The matter was fully considered by the management and the claimant was found unfit to be retained in service. Accordingly him his services were terminated with effect from 5th July, 1974 and he was paid one month wages in lieu of notice."

None from the management appeared in the witness box to give reasons and circumstances of terminating the services. According to the representative the finding of the enquiry was not made basis of termination which is evident from the language of termination letter. It refers to terms of employment which have not been placed on records and proved by the management. As regards loss of confidence as argued by the learned representative for the management the fact does not find mention in the termination letter, nor any officer of the management deposed about this fact in the proceedings. The verdict of the Supreme Court in Santosh Gupta versus State Bank of Patiala 1980 II LLJ page 72 is fully applicable to this case and non-compliance of the provisions of 25(F) are fatal to the action of the management in terminating the services of the workman in these circumstances. Therefore, this issue is decided against the management.

While answering the reference, I give my award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated the 9th October, 1980.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal Haryana, Faridabad.

No. 928, dated the 10th October, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal Haryana, Faridabad.